

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9146 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

G S R T C

Versus

J S DAVE

Appearance:

1. Special Civil Application No. 9146 of 1993
MRS VASAVDATTA BHATT for Petitioner No. 1
MR JS BRAHMBHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 03/02/2004

ORAL JUDGEMENT

1. In this petition the petitioner has challenged

the judgment and award made by the Industrial Tribunal, Vadodara dated 11th October, 1992 in Reference (IT) No. 298 of 1990, whereby the pay of the respondent is fixed at Rs.590/- with effect from 1st August, 1982 and the petitioner has been directed to fix the pay of the respondent in accordance with the award within 3 months from the date of publication of the award. The petitioner is also directed to pay the amount which is found due to respondent upon carrying out the aforesaid exercise.

2. The record of the petition shows that the respondent was appointed as Typist-cum-Clerk in the employment of the petitioner Corporation since 21st Mat, 1974. One Mr. P.S. Upadhyay also joined the service of the petitioner since 18th May, 1974 i.e. about 3 days prior to respondent joined the service of the petitioner. Mr. Upadhyay joined the service as Clerk. However, that appointment was totally on temporary basis and on 30th June, 1974 Mr. Upadhyay was relieved from the employment of the petitioner. He was reappointed on the same post with effect from 16th August, 1974. Thus, the respondent became senior to Mr. Upadhyay. In view of the settlement that was arrived at between the petitioner and its employees on 23rd November, 1984, which was to be implemented with effect from 1st August, 1982, the pay of respondent was increased from Rs.385/- as on 31st July, 1982, to Rs.558/- plus Rs.23/- P.P.M. with effect from 1st August, 1982. As against that, the pay of Mr. Upadhyay was increased from Rs.373/- to Rs.590/- with effect from 1st August, 1982. The respondent, therefore, raised a dispute that Mr. Upadhyay was paid Rs.90/- more than him and he should also be paid in accordance with the same scale. Since the dispute could not be resolved by the Conciliation Officer, Ahmedabad, a reference was made under the provisions of section 10(1)(c) of the Industrial Disputes Act, 1947 (for short 'the I.D. Act') on the issue whether the pay of respondent should be fixed at Rs.590/-.

2.1. Before the Tribunal the respondent was being represented by the union, which filed statement of claim at Exh. 5 reiterating the aforesaid averments and prayed for stepping up the pay. The said claim was opposed by the petitioner by filing its reply at Exh. 9. According to the petitioner, the pay of Mr. Upadhyay was fixed at Rs.590/- with effect from 1st August, 1982 and that increase was after the release of the increment and, therefore, it could not be taken into consideration while fixing the pay of the respondent. It was also contended by the petitioner that since Mr. Upadhyay worked as a

Clerk and the respondent as Typist, both these were different categories and the salary of Mr. Upadhyay could not be taken into consideration for fixing the pay of the respondent.

2.2. During the proceedings, the service records of both, Mr. Upadhyay as well as respondent were produced at Exhs. 15 and 16. No oral evidence was led by either of the parties.

3. On the strength of the material that was produced before the Tribunal, it came to the conclusion that the prayer of respondent was required to be accepted and, therefore, it gave the aforesaid direction to the petitioner. Being aggrieved by the said award and direction, the petitioner has filed the present petition.

4. Mrs. Vasavdatta Bhatt, learned advocate appearing for the petitioner has submitted that the Tribunal was not justified in holding that the respondent's pay was required to be fixed at Rs.590/- with effect from 1st August, 1982. She has submitted that while doing so, the Tribunal has erroneously come to the conclusion that the categories of Typist and Clerk to which the respondent and Mr. Upadhyay respectively belonged, were one and the same. She has further submitted that provision has been made in the settlement which was arrived at between the petitioner and its employees on 23rd November, 1984 and in the said settlement different scales of pay have been suggested for these two different categories. She has, therefore, submitted that the decision of the Tribunal is required to be quashed and set aside.

5. Having gone through the record of the petition and in particular the judgment of the Tribunal, it appears that the respondent, who was senior to Mr. Upadhyay, was paid lesser salary than Mr. Upadhyay. He, therefore, raised a demand that his pay should be brought to the level of Mr. Upadhyay. Since his request was not acceded to, he raised dispute resulting into the present proceedings. The facts of the case show that the respondent's pay was fixed at Rs.385/- as on 31st July, 1982 which by virtue of the aforesaid settlement, came to be increased to Rs.558/- plus Rs.23/- increment with effect from 1st August, 1982. As against that, the pay of Mr. Upadhyay as on 31st July, 1982 was Rs.373/- i.e. lesser than the respondent. However, by virtue of the aforesaid settlement, it was increased to Rs.590/- with effect from 1st August, 1982. The question which now requires to be decided is whether the Tribunal was justified in stepping up of the pay of the respondent so

as to bring it on par with Mr. Upadhyay's pay. The petitioner's contention before the Tribunal was that there are different provisions made for fixation of the pay in the settlement in respect of two categories, namely one of the Typist and the other of the Clerk. However, the petitioner failed to produce copy of the settlement before the Tribunal. The Tribunal, therefore, did not accept the said contention on the ground that no supporting evidence was produced by the petitioner to substantiate its say with regard to the different provisions for fixation of pay in the aforesaid settlement. In my opinion the Tribunal has adopted correct approach while dealing with this contention. When the respondent's definite case is that he and Mr. Upadhyay stand on the same footing and he being senior to Mr. Upadhyay, his salary should not be lesser than Mr. Upadhyay and when such definite dispute has been raised by the respondent, it was incumbent upon the petitioner to produce relevant material to substantiate its own case. When the petitioner had thought it fit to contest the claim of the respondent on the ground that his case could not be considered on par with Mr. Upadhyay and pay of the respondent was fixed in accordance with the settlement arrived at between the petitioner and its employees on 23rd November, 1984, it was the duty of the petitioner to produce copy of the said settlement before the Tribunal. In absence of such material, the Tribunal was fully justified in not accepting the contention raised by the petitioner. I, therefore, do not find any reason to interfere with that finding of the Tribunal.

5.1. The second contention that has been raised on behalf of the petitioner is that both i.e. the respondent and Mr. Upadhyay belong to two different categories, namely the respondent is in the category of Typist; whereas Mr. Upadhyay is in the category of Clerk. As against that, the say of the respondent is that both these categories are same and Mr. Upadhyay and he stand on the same footing in the matter of fixation of pay. In support of his averment, the respondent, through the Union, has produced a copy of the labour settlement dated 23rd November, 1984 wherein at item no. 4 both the categories have been mentioned and the revised pay-scale is common for both these categories. There is, therefore, no difficulty in coming to the conclusion that Mr. Upadhyay as well as the respondent belong to the same category and they stand on the same footing. In fact in the petition the petitioner has described respondent as Typist-cum-Clerk, meaning thereby that the petitioner also treated the respondent as Typist-cum-Clerk. Any how the petitioner had failed to

produce any material to show that the respondent and Mr. Upadhyay belonged to different categories. As against that, the respondent has produced documentary evidence to show that both have been included at item no. 4 which has a common scale of pay. Thus, the view that has been taken by the Tribunal appears to be just and proper and it does not call for any interference by this Court under Article 227 of the Constitution of India wherein the jurisdiction of this Court is very limited. When this Court finds that the judgment and award of the Tribunal is not such which can be termed as perverse or that no reasonable person could have reached to such conclusion, it should not interfere with the same.

6. In view of the aforesaid, there is no merit in this petition and it is required to be dismissed and it is hereby ordered to be dismissed. Rule discharged with no order as to costs. Interim relief, if any, stands vacated.

[AKSHAY H. MEHTA, J.]

* Pansala.